G. R. S. 58]

Previous references.
CS- 293-11-3.

19[redacted]. 14
(Court-)

File No. 47-13

Serial Nos. 1-5

Later references.
CS 202-15(1-3)

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 1-5

Part B for Oct 15

SUBJECT.

Modification of rules re signing of vakalatnamas (RA Subj. No 59-12)

5) To The Regr Chief Cts & D.C. Mysore } J 1092-3 Dy 14.9.15

Govt agree with the Chief Cts that the rules about the certificate to be endorsed on vakalatnamas may be modified

GPB—10,000—20-3-15

M. Ghouse
29/10/15

G.R.S. 11] 1913.

GENERAL AND REVENUE SECRETARIAT.

(Courts)

NOTES.

File No. 47 /13

FILE HEADING.

Modification of rules re Signing of Vakalatnamas
(R. A. Subject no. 59 of 12)

From

No.	Dated	Received

Diary No.	Enclos.	Spare Copies.	Serial No.

BRIEF ABSTRACT OF LETTER.

NOTES AND ORDERS.

NOTES—First Sheet.

GPB—30,000—12-8-11

(2

SUBJECT No. 59.

Modification of rules *re*, the signing of *vakalatnama* before lawyers.

Mr. B. Narasinga Rao, Seringapatam taluk.

Summary of discussion.—The circular of the Chief Court directing that *vakalatnamas* should contain a certificate of the lawyer to the effect that it was signed by the client before him and that the client was personally known to him requires to be modified as this practice causes great inconvenience to clients and lawyers alike. It is therefore prayed that a certificate from a lawyer that it is signed before him and that he believes him to be the party may be considered sufficient.

Messrs. S. R. Balakrishna Rao, C. Subba Rao and H. Krishnappa, supported the proposal.

Reply of Government.—Noted.

Subd. There was a proposal last year from the Chief Court modifying rules 1 & 2 now in force; but the proposal was negatived (Vide etc file 283-11 part up).

2 As the subject is brought up again, may the opinin of the Chief Court be called for on the representation? Draft Subd.

K.N. (123) 14.8.13 SN 5/8/13 (Sd Lee) SPL 5/8

97)

G. R. S. 1.

General and Revenue Secretariat. | Chs File No. 47 of 191

Serial No.	
	Do.
1	The Registrar, Chief Court of Ellyssos No. J. 439. d. 7.8.13. Calls for the opinion of the Chief Court in the matter.
2	From The Same officer no 765/59 d 14.8.13 States that the Judges still adhere to the opinion expressed already in the matter, though it did not commend itself to Govt
3)	Subd. Please see Chs file 283-11, Sl 2 for the opinion of the Chief Court on this question. The alterations proposed were not brought into effect (Please see para 6 of the collection).
4)	Subd. for orders.

KN (123) 16.8.13 MK.

16

Dy Secy) Spl 18/8/13

5) The draft letter to the Chief Ct not having been approved by any Sect officer, explanation on routine note is due as to why it was issued & who are responsible for this.

Dy Secy 19/8

Dy Secy) Spl

6) No further action appears to be needed as the reply sent was noted "Noted" and as the existing rule is much safer than the proposed one.

Dy Secy & Law 23/8

(Spl Cancellor)

7) The matter may be dropped unless the representation is repeated this year 27.8.13.

27/8/13

Spl

Notes Contn. sheet.

GPE—65,000—17-6-12.

SUBJECT No. 444.

Vakalatnamas.

Messrs. Padmanna and K. Venkatasamaiya, Nanjangud taluk.

Summary of Representation.—It is prayed that the restriction requiring lawyers to sign a certificate that "the party is well known to me" in the *vakalatnama* be done away with. If it is found necessary, attestation of witnesses may be insisted upon.

[G. R. S. 12]

General and Revenue Secretariat.

File No. 47 of 1913-14

Serial No.

The requested was repeated in the DRA of 1913 also.

Subd for orders.

Leg.-116 MM
24/2/1914

Dr Scott)
First member)

SPR 25/2
Dunn & Chevers 25/2 SPR

I do not understand why there should be any question like this raised by the lawyers. Every person who does any act for another is bound to see that his authority is in proper i.e. sworn duly by the person concerned. It is unnecessary that we should ask for any certificate at all, and I see no harm in removing it altogether. If the Legal practitioner is found to act without authority, his acts do not bind the party, and if he is in any way found to have acted improperly, he

NOTE—Contn. sheet.

GPE—65,000—17-6-12.

G. R. S. 12]

5-7/2

(6

General and Revenue Secretariat.

05 File No. 47 of 1913-14

Serial No.

will render himself liable to civil action and in bad cases to disciplinary action under the E Br. Regns.

18) This view may be suggested & opinion of Chief Called for.

22/3/14

23/3 Draft 23/3

19) Draft Subd.
Reg-116
13/4/1914

Sd/ 14/4

12) No such certificate seems to be required by the rule quoted above. If approved, the draft with amendment will issue.

Sd/ 6.11.15

Sd/ 13) Yes 8/11

14) Issue Tomorrow

22/11

NOTE—Contn. sheet.

GPB—60,000—7-11-13

G. R. S. 12]

3410

General and Revenue Secretariat. | C.S. File No. 47 of 191 3. 14

Serial No.

3 To The Registrar,
Chief Court
J 2145 of 6.1.15.

Enquiry if any certificate is necessary in the matter of modifying rules re. the signing of Vakalatnama before lawyers. It is suggested that person who does any act for another is bound to see that his authority is one given duly by the person concerned. Besides if the legal practitioner is found to act without authority & he has acted in any way he ~~found~~ improper he will render himself liable to civil action &c.

Suggesting the above, opinion of the Chf Ct is called for in the matter.

8/- From the ~~Registrar~~ Chief Court no 4864/~~336~~ dt ~~22~~ 19-4-15.

Forwards the opinion of the Judges of the Chief Court on the question -

Sealed.

15/5/15 Hee 15 Please prepare draft in accordance with the view of the Chief Judge

3 8/5

16) Accepted.
16.
30/8/15
31/8/15

NOTE—Contn. sheet.

GPB—60,000—7-11-13

340

(10)

G. R. S. 12]

General and Revenue Secretariat.

C/o File No. 47 of 1913-14

Serial No.

17) The draft is in accordance with the views of the Chief Comt
May be approved
& 4/9

I init Member)

18) I do not understand quite clearly the opinions of the Judges. I have altered the draft, which may issue - I am inclined to think that that is what the Ch Ct means.
9/9/15 — 9/9/15

19) Issue
ES 10/9.

Pg 9/9

5 To Sea Registrar Chief Court
The Ag Commissioner Mysore Unit
Agrees vide No. J 1092-3 . 14.9.1915
Agrees with the Chief Court that the rule about the certificate to be endorsed on naturalization may be modified and requests that the Chief Court may be issue the necessary rule of practice in supersession of the existing circular letters.

NOTE—Contn. sheet.

GPE—25,000—22-3-15

(11

G. R. S. 26]

c/o File no. 47-13

Serial No. 1

Diary No. of letter replied to—

No. 9439

General and Revenue Secretariat

( )

, the 191 .

To

The Registrar, Chief Court

of Mysore

Date of issue 7/8/13

Signed by H. C. P. Nagagopalachar

Sir,

I am directed to invite your attention to Subject no. 59 of proceedings of the Rep. Assembly of 1912 & the reply of Govt. thereto in the matter of modifying rules re the Signing of Vakalatnamas before Lawyers & to request you to be so good as to favour Govt. with the opinion of the Chief Court in the matter.

I have etc

over.

For Secy to Govt

KV. (123) SW

~~SUBJECT~~ 4.8.13 5/8

No: 765/59

CHIEF COURT OF MYSORE.

Bangalore, dated 14th August 1913.

14th J 572

From,

1913-1914
SECTION Courts
4713
2

The REGISTRAR of the
Chief Court of Mysore.

To,

The SECRETARY to the Govt: of Mysore,
General and Revenue Departments.

S i r,

With reference to your letter No. J. 439/cts.47-13-1 dated 7th August 1913, asking for the opinion of the ~~Chief~~ Chief Court on subject No. 59 of the Proceedings of the Representative Assembly of 1912, in the matter of modifying the rules re the signing of ~~the~~ vakalatnamas before lawyers, I am directed to invite your attention to this Office No. 493 - 32 dated 6th August 1912, and to state that the Judges still adhere to the opinion expressed therein although that opinion did not commend itself to Government (Vide Proceedings of Government No. J.1222-3/Cts.283-11-3 dated 31st October 1912).

I have the honour to be,
Sir,
Your most obedient servant,

Registrar.

N.G.
N.G.

Re the Signing of Vakalatnamas before Lawyers 13

G.R.S. 26] 9/1.

C/S File No. 47-13

Serial No. 3

Diary No. of letter replied to

No. J. 2145.

General and Revenue Secretariat

( )

, *the* 19 .

To

The Registrar

Chief Court

Date of issue 4. 1. 1915.

Signed by Sri. Srinivasayya

Sir,

Adverting to correspondence ending with your letter No 765/59 of the 14th Aug 1913 in the matter of modifying the rule re the Signing of Vakalatnamas before Lawyers, I am directed to enquire if any certificate at all is necessary. It is suggested that ~~Do every~~ person who does any act for another

over.

SUBJECT.

CLC 9/1/15

is bound to see that his authority
is one given duly by the person concerned.
Besides, if the Legal Practitioner
is found to act without authority,
his acts do not bind the party
and if he is in any way found
to have acted improperly, he will
render himself liable to civil
action besides running the risk
of being subjected to disciplinary
action under the Legal Practitioners
Regulation.

I am to suggest the
above view and to request that
Govt maybe furnished with the
opinion of the Chief Court in
the matter.

Thank te

SBM

Dinu
8/11

For Secy to Govt

Reg. 116
13/4/1914

List of enclosures,

Copied by

Examined by

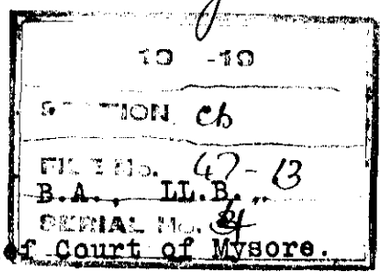
GPB—10,000—28-2-11.

CHIEF COURT OF MYSORE.

Bangalore, dated 19th April 1915.

No. 4864
335

J 3410



From

N. T. GOPALIENGAR, Esquire, B.A., LL.B.,
Registrar of the Chief Court of Mysore.

To

D. M. NARASINGA RAO, Esquire, B.A., B.L.,
Offg: Secretary to the Government of Mysore,
General and Revenue Departments.

S i r,

Adverting to your letter No. J. 2145 dated 9th January 1915 enquiring if any certificate at all is necessary to Vakalatnamas, I am directed to forward to Government the accompanying opinions of the Judges on the subject.

I have the honour to be,
Sir,
Your most obedient servant,

N. Gopaliengar

REGISTRAR.

N.G.

O P I N I O N S.

(16)
Enclos
47-134

The CHIEF JUDGE :-

It is not proposed by the Government to abolish or alter the rule requiring authentication of vakalatnamas not presented in person, but only the certificate which has under the present rules to be given by the Advocate or Pleader when a vakalat, unauthenticated, is tendered to him in person.

In such a case if he does not know the party he can at the risk of losing a client tell him to go and get his vakalat authenticated, the only other thing he can do is to make enquiries, and satisfy himself and give a certificate: this I think is the effect of what this Court proposed to allow but the Government would not have it. Consequently whenever the client is not personally known to the practitioner but offers to execute a vakalatnama in his presence the practitioner must send him away to get it authenticated.

It may be that this causes inconvenience, but in Madras under Rule 276 of the Civil Rule of Practice all vakalatnamas have to be authenticated, unless given by Public Officers of whose signatures the Courts will take judicial notice: and during the time I have served in the Madras Presidency I do not remember to have heard any complaints about the rule, or to have had to do with any cases in which the genuineness of the vakalat was called in question.

If this rule were adopted all parties would know that there is no use in going to retain a lawyer without a duly authenticated vakalat ready; but I do not think we need abolish the present privilege in the case of persons personally known to the practitioner. The practitioner could in such a case be the authenticator.

Some sort of certificate is necessary probably, to prevent an unsuccessful plaintiff or decree holder from having

(17

a second trial by alleging that he was in fact no party to the first attempt, or a defendant resisting execution on the ground that the decree was obtained behind his back. All the Bar Associations recognise that when the vakalatnama is not executed in the presence of the practitioner it requires authentication, but Mysore, Chitaldurg and Chickmagalur seem to think there is no necessity for any certificate when the vakalatnama is executed in the practitioner's presence. But at least it will be necessary in such cases to have a certificate that the vakalat was executed in the practitioner's presence: otherwise the Court will not know whether it is one which requires authentication or not. But that is a certificate of a different kind from that in question.

I am inclined to think that in cases where the vakalat is executed in the practitioner's presence no certificate of identity is necessary, but I am not sure that the Shimoga and Bangalore Associations take that view. I rather think that this suggestion supported by the Bangalore District Judge is intended to provide that in all cases the vakalats shall be either authenticated or attested. What they want is so to enlarge the class of qualified authenticators, that there may be no complaint against the rule on the ground of inconvenience to parties. This would assimilate the rule to the Madras Rule except that attestation is not there allowed to be substituted for authentication. Attestation no doubt is not quite so satisfactory a safeguard as authentication by a public functionary, but it is the safeguard adopted in many very important transactions evidenced by documents; wills, and mortgages for example, and I should not object to the introduction of the rule proposed by Shimoga and Bangalore Associations. It is said but I do not know on what authority that it is accepted as sufficient in Bombay. The practitioner concerned, or any Advocate or First Grade Pleader might

(18)

might be allowed to authenticate in case of personal knowledge, as seems to be suggested by the Bangalore Association.

I should be inclined to reply to the Government that the certificate with the variation proposed by the Judges in 1912 and 1913 should afford all that is necessary in the way of relief to practitioners, but we do not object to the abolition of the certificate of identity provided that in that case, all vakalatnamas without exception must be either authenticated, or attested by two literate witnesses, at the time of execution. To the end that this may not cause undue inconvenience to parties the list of authorised authenticators may be enlarged as proposed by the Bangalore Law Association so as to include the advocate concerned, ministerial officers of Courts and officers of Government of the rank of a Sheristedar, Sheikdars, and other respectable persons whom the Government might choose to include in the list, if indeed it does not include them (except advocates) already under the term 'public functionary'.

13-4-15.

Mr. Justice K.S. CHANDRASEKHARA AIYAR :-

I agree with the Chief Judge. Anything that tends to establish the genuineness of a vakalat, by affording proof of its execution and of the identity of the executant, may be accepted if the procedure is not too elaborate and if parties are willing to adopt it. In this view a certificate by a legal practitioner that he knows or has satisfied himself of the execution of the vakalat by a particular person is at least as good as an "authentication" by a public functionary, which it is to be feared if often done as a mere matter of routine; and I do not see that any useful object whatever is gained by the suggestion contained in the Secretariat letter for the abolition of such certificates. It may be

that

(19)

that a legal practitioner who acts ~~we~~ without proper authority is liable to ~~ge~~ get into trouble; but is it nothing that the proceedings of Courts of justice will also have been stultified unless there be reasonable guarantee that parties to such proceedings are really represented?

As regards attestation by witnesses, the only difficulty is that there may not often be any ~~ge~~ guarantee as the to the genuineness of the attestations ~~tem~~ themselves, which must presumably be treated as genuine unless subsequently impeached. Since a public functionary who "authenticates" a vakalat is expected, before doing so, to satisfy himself as regards the fact of execution and the identity of the executant by making some sort of enquiry, is it necessary to mention attestation by witnesses as a separate method of proof? If however the other Judges think otherwise, I shall not object.

17-4-15.

Mr. Justice T. PARAMASIVA IYER :-

I agree with the opinion of the learned Chief Judge. Attestation by two literate witnesses is I think a needed safeguard.

17-4-15

U. Rajamanickam

REGISTRAR.

N.G.

2½ Modifying the rule regarding certificate at — ni Vakalatnama (20)

G.R.S. 28] 11/4

C5 File No. 4743
Serial No. 4

*Diary No. of letter replied to*_____

Proceedings of the Government of His Highness the Maharaja of Mysore

GENERAL AND REVENUE SECRETARIAT.
( )

READ—

, *the* 191 .

Govt Procs No J 1222-3/cl5 283-11-3 dated 31st Oct 1912 stating that the rules regarding the mode of authentication of Vakalatnamas may be left unchanged.

D

Date of issue 14. 9. 1915.

Signed by Mr L. Srinivasa Iyer

~~ORDER THEREON. No.~~

2) Subject no 59 of the Proceedings of the Representative Assembly of 1912 praying for a modification of the said rules and the reply of Govt thereto and subject no 446 of the R.A. of 1913.

3) Correspondence ending with

over.

SUBJECT.

)

with letter no. 4864/335 dated 21/9/4.15 from the Registrar, Chief Court, forwarding the opinion of the Judges of the Chief Court in the matter.

Order thereon - J 1092-3.

On further consideration Govt are inclined to agree with the Chief Court that the rule requiring legal practitioners to certify in the Vakalatnama that the client is personally known to them may be abolished and that a certificate by the legal practitioner that he has satisfied himself that the Vakalat produced by him was signed by the party by whom it purports to have been signed may be accepted.

Authentication of Vakalatnamas by the Chief Ministerial officer of the Court in which the Vakalatnama is intended to be filed may also be permitted

about the certificate to be endorsed on Vakalatnamas may be modified. It would be sufficient to add at the end of the first sentence of Cr. C. No. 68 d. 24.7.85 (printed on P. 138 of the Civil Digest) the words: "or that he has satisfied himself as to the identity of the client who purports to execute the Vakalatnama".

GPB-20000-8-10-11

G.R.S. 27]

GENERAL AND REVENUE SECRETARIAT.

(Continuation sheet draft form.)

provided the Court is a District Court or a Court of the Subordinate Judge.

The Chief Court is requested to issue the necessary rules of practice in supersession of the existing circular letters.

68 1/9 For See Y Govt

7/9/15 9

TO The Registrar, Chief Court
The Dy Comr, Myingyan Dist
In communication to the R.S. Member concerned
Copy to the Darasa Secy

Reg.
30/8/15
31/8